

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

PPS DATA, LLC ) (  
) ( CIVIL ACTION NO.  
VS. ) ( **2:18-CV-07-JRG**  
) ( MARSHALL, TEXAS  
) ( SEPTEMBER 12, 2019  
JACK HENRY & ASSOCIATES, INC.) ( 8:27 A.M.

TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE CHIEF JUDGE RODNEY GILSTRAP

UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

MR. ANTHONY SON  
MR. STEVE MADDOX  
MR. KAVEH SABA  
MR. MATT RUEDY  
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(Proceedings recorded by mechanical stenography, transcript  
produced on a CAT system.)

1 FOR THE DEFENDANT:

2

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1 P R O C E E D I N G S

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Be seated, please.

5 Are the parties prepared to read into the record  
6 those items from the list of pre-admitted exhibits used  
7 during yesterday's portion of the trial?

8 MR. SON: PPS Data does not have any exhibits to  
9 read into the record.

10 THE COURT: You didn't use any items from the list  
11 of pre-admitted exhibits during yesterday's portion of the  
12 trial, Mr. Son?

13 MR. SON: No.

14 THE COURT: How about Defendant?

15 MR. MAZINGO: We do, Your Honor. Mr. Alexander  
16 will read those in.

17 THE COURT: Let's proceed.

18 MR. ALEXANDER: Yesterday, Defendant submitted the  
19 following defense trial exhibits: 2, 7, 15, 65, 89, 111,  
20 132, 258.

21 THE COURT: All right. Do Plaintiffs have any  
22 objection to that rendition by the Defendant?

23 MR. SON: No -- no objection.

24 THE COURT: All right. Thank you, counsel.

25 Before I bring the jury in and begin my final

1 instructions to the jury, I want to remind those present,  
2 particularly our friends in the gallery, that in the  
3 Court's view, the Court's final instructions to the jury  
4 and counsel's closing arguments are the most serious part  
5 of a very serious process.

6           Therefore, I especially do not want any  
7 distractions during my final instructions or counsel's  
8 closing arguments that might divert the jury's attention  
9 from what's going on.

10           Consequently, if you need to do something in the  
11 gallery, if you need to get something, if you need to take  
12 something out, if you need to come or go, if you need to  
13 shift or rattle papers, do it now. Don't do it once I  
14 bring the jury in and we start the final instructions and  
15 closing arguments.

16           I want everybody completely still and completely  
17 attentive without any disruptions whatsoever.

18           And it goes without saying that once we have a  
19 verdict and I read that verdict into the record, there are  
20 to be no reactions from anyone in the courtroom. I know  
21 you understand that, but I just want to emphasize it one  
22 last time.

23           Are there any questions or issues that need to be  
24 raised by either party before I bring the jury in and  
25 proceed with the Court's final instructions or charge to

1 the jury that have not been previously taken up?

2 Does Plaintiff have anything else?

3 MR. SON: No, Your Honor.

4 THE COURT: Do Defendants?

5 MR. HEIDRICK: Your Honor, our paralegal is out in  
6 the hallway. Would you like for me to go get him now  
7 before --

8 THE COURT: I don't want he or she coming and  
9 going. He's been pretty active through this trial coming  
10 and going, and I don't want that during closing.

11 MR. HEIDRICK: If I may go get him.

12 THE COURT: Let's do that now.

13 MR. HEIDRICK: Thank you, Your Honor.

14 THE COURT: Mr. Maddox, the Plaintiff has 28  
15 minutes total for closing arguments. Would you like a  
16 warning on your first closing argument when a certain  
17 amount of time has been used?

18 MR. MADDOX: Yes, please, Your Honor.

19 THE COURT: What would you like me to warn you?

20 MR. MADDOX: May I have a warning at 17 minutes?

21 THE COURT: When you have used 17 minutes.

22 MR. MADDOX: Yes, sir, when I have used 17  
23 minutes.

24 THE COURT: I will do that.

25 MR. MADDOX: Thank you.

1           THE COURT: And, Mr. Heidrick, what kind of  
2 warning, if any, would you like for Defendant's closing  
3 argument?

4           MR. HEIDRICK: I would like five minutes, Your  
5 Honor, please.

6           THE COURT: Five minutes before the time ends?

7           MR. HEIDRICK: Five minutes, yes, please, sir.

8           THE COURT: Okay. All right. Unless there's  
9 something further, let's bring in the jury, Mr. Elliott.

10          COURT SECURITY OFFICER: All rise.

11          (Jury in.)

12          THE COURT: Good morning, members of the jury.  
13 Welcome back, and please be seated.

14          Members of the jury, you've now heard all the  
15 evidence in this case, and I'm now going to instruct you on  
16 the law that you must apply.

17          I want you to understand each of you are going to  
18 have your own printed copy of these final jury  
19 instructions. That being the case, you're welcome to take  
20 notes as I give you these instructions, but there's no real  
21 need to because you'll have your own printed copy to review  
22 when you retire to deliberate.

23          It's your duty to follow the law as I give it to  
24 you. On the other hand, and as I've previously said, you,  
25 the jury, are the sole judges of the facts in this case.

1 Do not consider any statement that I have made over the  
2 course of the trial or might make during these instructions  
3 as an indication to you that I have any opinion about the  
4 facts in this case.

5           You're about to hear closing arguments from the  
6 attorneys for the parties. Statements and arguments of the  
7 attorneys, let me remind you, are not evidence, and they  
8 are not, ladies, instructions on the law. They're intended  
9 only to assist you in understanding the evidence and the  
10 parties' competing contentions.

11           A verdict form has been prepared for you, and you  
12 will take this verdict form with you to the jury room while  
13 you deliberate. And when you have reached a unanimous  
14 decision as to the verdict, you will have your foreperson  
15 fill in the blanks in the form reflecting your unanimous  
16 answers to those questions, then your foreperson will date  
17 it and sign it on the final page. You'll then advise the  
18 Court Security Officer that you have reached a verdict.

19           Each answer in the verdict form should be answered  
20 by you from the facts as you find them to be. Do not  
21 decide who you think should win this case and then answer  
22 the questions to reach that result. Again, your answers  
23 and your verdict must be unanimous.

24           Now, in determining whether any fact has been  
25 proven in this case, you may, unless otherwise instructed,

1 consider the testimony of all the witnesses regardless of  
2 who may have called them, and you may consider the effect  
3 of all the exhibits received and admitted into evidence,  
4 regardless of who may have introduced or presented them.

5           You, the jurors, are the sole judges of the  
6 credibility and believability of each and every witness,  
7 and you're the sole judges of the amount of weight and  
8 effect to be given to each portion of the evidence in this  
9 case.

10           As I've previously told you, the attorneys in this  
11 case are acting as advocates for their competing parties  
12 and as to their competing claims, and they have a duty to  
13 raise objections when they believe evidence is offered  
14 throughout the course of the trial that should not be  
15 admitted under the rules of the Court.

16           In those cases where I have sustained an objection  
17 to a question that was addressed to a witness, you must  
18 disregard the question entirely, and you may draw no  
19 inferences from its wording or speculate about what the  
20 witness would have said if I had allowed them to answer the  
21 question.

22           On the other hand, if an objection was overruled,  
23 then you're to treat the answer and the question just as if  
24 no objection had been made, that is, like any other  
25 question and answer.



1           Now, at certain times throughout the course of the  
2 trial, it's been necessary for the Court to talk with the  
3 lawyers here at the bench outside of your hearing or by  
4 asking you to retire to the jury room and talking with them  
5 when you were outside of the courtroom. This happens  
6 during trials because there are things that occasionally  
7 come up that do not involve the jury.

8           You should not speculate about what was said  
9 during any of those discussions that took place outside of  
10 your presence.

11           Now, members of the jury, there are two types of  
12 evidence that you may consider in properly finding the  
13 truth as to the facts in this case.

14           One is direct evidence, such as the testimony of  
15 an eyewitness.

16           The other is indirect or circumstantial evidence,  
17 that is, the proof of a chain of circumstances that  
18 indicates the existence or the nonexistence of certain  
19 other facts.

20           As a general rule, you should know that the law  
21 makes no distinction between direct evidence and  
22 circumstantial evidence, but the law simply requires that  
23 you, the jury, find the facts based on the evidence  
24 presented, both direct and circumstantial.

25           Now, certain testimony in this case has been

1 presented to you through depositions. A deposition is the  
2 sworn, recorded answers to questions asked to a witness in  
3 advance of the trial.

4 If a witness can't be present in person to  
5 testify, then the witness's testimony may be presented  
6 under oath in the form of a deposition.

7 As I've told you earlier before the trial began,  
8 the attorneys representing both sides in this case  
9 questioned these deposition witnesses under oath. At that  
10 time, a court reporter was present, the witness was sworn  
11 and placed under oath, they were asked questions, and their  
12 answers, together with those questions, were transcribed  
13 and recorded.

14 You've seen the deposition testimony presented by  
15 way of a video recording, and you've seen deposition  
16 testimony presented through live readings by the attorney  
17 and an individual playing the role of the witness.

18 Both of these forms of dep -- deposition testimony  
19 are entitled to the same consideration by you, the jury, as  
20 testimony given by a live witness appearing in person and  
21 testifying during the trial from the witness stand in open  
22 court.

23 Accordingly, you should judge the credibility and  
24 importance of deposition testimony to the best of your  
25 ability just as if the witness had appeared in person and

1 testified in open court.

2           Now, while you should consider only the evidence  
3 in this case, you should understand, members of the jury,  
4 that you are permitted to draw such reasonable inferences  
5 from the testimony and exhibits that you feel are justified  
6 in the light of common experience.

7           Said another way, you may make deductions and  
8 reach conclusions that reason and common sense lead you to  
9 draw from the facts that have been established through the  
10 testimony and the evidence in this case.

11           However, you should not base your decisions on any  
12 evidence not presented by the parties in open court during  
13 this trial, including your own personal experiences with  
14 checks or banking.

15           Now, unless I instruct you otherwise, you may  
16 properly determine that the testimony of a single witness  
17 is sufficient to prove any fact, even if a greater number  
18 of witnesses may have testified to the contrary if after  
19 considering all of the other evidence, you believe that  
20 single witness.

21           When knowledge of a technical subject may be  
22 helpful to the jury, a person who has special training and  
23 experience in that technical field, called an expert  
24 witness, is permitted to state his or her opinions on those  
25 technical matters to the jury.

1           However, you're not required to accept those  
2 opinions. As with any other witness, it is solely up to  
3 you to decide who you believe and who you don't believe and  
4 whether or not you want to rely on their testimony.

5           Now, certain exhibits have been shown to you over  
6 the course of the trial that were simply illustrations. We  
7 call these types of exhibits demonstrative exhibits or  
8 sometimes just demonstratives for short.

9           Demonstrative exhibits are a party's depiction,  
10 picture, or model to describe something involved in the  
11 trial. If your recollection of the evidence differs from  
12 the demonstratives, you should rely on your recollection.

13           Remember, demonstratives, which are sometimes  
14 called jury aids, are not evidence, but the witness's  
15 testimony during which a demonstrative is used by the  
16 witness is evidence.

17           Now, in any legal action, facts must be proven by  
18 a required amount of proof or evidence known as the burden  
19 of proof.

20           The burden of proof in this case is on the  
21 Plaintiff for some issues, and it's on the Defendant for  
22 other issues. There are two different burdens of proof  
23 that you will apply in this case. One is the preponderance  
24 of the evidence, the other is clear and convincing  
25 evidence.

1           The Plaintiff in this case, PPS Data, LLC, who  
2 you've heard referred to throughout the trial both as the  
3 Plaintiff and simply as PPS Data, has the burden of proving  
4 patent infringement by a preponderance of the evidence.  
5 PPS Data also has the burden of proving damages for any  
6 patent infringement by a preponderance of the evidence.

7           A preponderance of the evidence means evidence  
8 that persuades you that the claim is more probably true  
9 than not true. Sometimes this is talked about as being the  
10 greater weight and degree of credible testimony.

11           Now, the Defendant in this case, Jack Henry &  
12 Associates, Inc., who you've heard referred to throughout  
13 the trial as either the Defendant or Jack Henry, has the  
14 burden of proving patent invalidity by clear and convincing  
15 evidence.

16           Clear and convincing evidence means evidence that  
17 produces in your mind an abiding conviction that the truth  
18 of the party's factual contentions are highly probable.

19           Now, although proof to an absolute certainty is  
20 not required, the clear and convincing evidence standard  
21 requires a greater degree of persuasion than is necessary  
22 for the preponderance of the evidence standard.

23           If the proof, members of the jury, establishes in  
24 your mind an abiding conviction in the truth of the matter,  
25 then the clear and convincing evidence standard has been

1 met.

2           Now, these standards are different from what  
3 you've heard about or learned during criminal proceedings  
4 where a fact has to be proven beyond a reasonable doubt.

5           On a scale of the various standards of proof, as  
6 you move from preponderance of the evidence on one end,  
7 where proof need only be sufficient to tip the scales in  
8 the favor of the party proving that fact, to the other end  
9 of the spectrum of beyond a reasonable doubt, where a fact  
10 must be proven to a very high degree of certainty, you can  
11 think of clear and convincing evidence as being between  
12 those two ends of the spectrum.

13           Now, in determining whether any fact has been  
14 proven by a preponderance of the evidence or by clear and  
15 convincing evidence, you may, unless otherwise instructed,  
16 consider the stipulations, the testimony of all the  
17 witness -- witnesses, regardless of who called them, and  
18 all the exhibits received into evidence during the trial,  
19 regardless of who may have produced them.

20           Now, as I did at the start of the case, I'm going  
21 to first give you a summary of each side's contentions in  
22 this case, and I'll then provide you with detailed  
23 instructions on what each side must prove to win on each of  
24 its contentions.

25           As I've previously told you, this case concerns

1 one United States patent, U.S. Patent No. 7,216,106, which  
2 you've heard referred to throughout the trial as the '106  
3 patent. You've also heard it called the patent-in-suit or  
4 perhaps the asserted patent.

5 Patent Claims 1 through 6 and 9 of the '106 patent  
6 are what is at issue in this case. You've heard them  
7 referred to throughout the trial as the asserted claims.

8 Plaintiff claims that Claims 1 through 6 and Claim  
9 9 of the '106 patent were infringed by the Defendant, and  
10 the Plaintiff is seeking money damages because of that  
11 infringement.

12 The Defendant denies that it has infringed any of  
13 the asserted claims, Claims 1 through 6 and Claims 9 --  
14 Claim 9 of the '106 patent. And the Defendant contends  
15 that these claims are invalid.

16 It's your job, members of the jury, to decide  
17 whether the Plaintiff has proven that the Defendant has  
18 infringed any of the asserted claims and whether the  
19 Defendant has proven that any of the asserted claims are  
20 invalid.

21 Infringement and -- and invalidity are separate  
22 questions and should be considered and answered separately.

23 If you decide that the asserted claims have been  
24 infringed and are not invalid, then you'll need to decide  
25 what amount of money damages, if any, to award to the

1 Plaintiff to compensate it for that infringement.

2           Now, as I did at the beginning of the trial, I  
3 gave you some general information about patents and the  
4 patent system at the beginning of the trial that was  
5 relevant to this case. I'm now going to give you more  
6 detailed instructions about how the patent laws of our  
7 country relate to this case.

8           Before you can decide many of the issues in this  
9 case, you will need to understand the role of the patent  
10 claims.

11           The patent claims are the numbered sentences at  
12 the end of the patent. The claims are important because  
13 it's the words of the claims that define what a patent  
14 covers.

15           The figures, the drawings, and the text and the  
16 rest of the patent provide a description or examples of the  
17 invention, and they provide a context for the claims. But  
18 it is the claims that define the breadth of the patent's  
19 coverage.

20           Each claim is effectively treated as if it were a  
21 separate patent, and each claim may cover more or may cover  
22 less than any other claim.

23           Accordingly, what a patent covers depends, as a  
24 result, on what each of its claims cover.

25           Claims may describe methods or products, such as



1 machines or processes for making or for using a product.

2           In this case, the asserted claims are -- are  
3 computer-readable medium claims. The claims at issue here  
4 describe a computer-readable medium for a method for remote  
5 deposit of checks.

6           Now, patent claims may exist in two forms referred  
7 to as independent claims and dependent claims. This case  
8 involves one independent claim, Claim 1 of the '106 patent,  
9 and six dependent claims, Claims 2 through 6 and Claim 9 of  
10 the '106 patent.

11           An independent claim does not refer to any other  
12 claim of the patent. An independent claim sets forth all  
13 the requirements that must be met in order to be covered by  
14 that claim.

15           As a result, it's not necessary to look at any  
16 other claim to determine what an independent claim covers.  
17 Again, Claim 1 in this case is the only independent claim.

18           A dependent claim, on the other hand, does not by  
19 itself recite all the requirements of the claim but refers  
20 to another claim for some of its requirements.

21           In this way, the claim depends from another claim.  
22 A dependent claim incorporates all of the requirements of  
23 the claim to which it refers or from which it depends. The  
24 dependent claim then adds its own additional requirements.

25           So to determine what a dependent claim covers,

1 it's necessary to look at both the dependent claim itself  
2 and any other claim from which it refers, or as we  
3 sometimes say, from which it depends.

4 All the claims at issue in this case, except  
5 Claim 1, are dependent claims. Each patent claim sets  
6 forth in words a set of requirements in a single sentence.

7 The requirements of a claim are usually divided  
8 into parts or steps called limitations. Sometimes they're  
9 called elements.

10 If a device, system, apparatus, or instrumentality  
11 satisfies each of these requirements in the claim's  
12 sentence, then it is said that the device, system,  
13 apparatus, or instrumentality is covered by the claim,  
14 falls under the claim, or infringes the claim.

15 For example, a claim that covers the invention of  
16 a table may recite a tabletop, four legs, and glue that  
17 secures the legs to the tabletop. In this example, the  
18 tabletop, the legs, and the glue are each separate  
19 limitations or elements of the claim.

20 Now, the beginning portion or preamble of a claim  
21 often uses the word "comprising." The word "comprising,"  
22 as used in the preamble, means including or containing.  
23 When comprising is used in the preamble, a product that  
24 includes all the limitations or elements of the claim, as  
25 well as additional elements, is covered by the claim.

1           For example, a claim to a table comprising --  
2 comprising a tabletop, legs, and glue would be infringed by  
3 a table that includes a tabletop, legs, and glue even if  
4 the table also includes wheels on the ends of the table's  
5 legs -- that is, other things.

6           If a product is missing even one element or  
7 limitation of a claim, it does not meet all the  
8 requirements of the claim and is not covered by the claim.  
9 And if a product is not covered by the claim, it does not  
10 infringe that claim.

11           Now, you first need to understand each claim term  
12 in order to decide whether or not there is infringement of  
13 a claim and to decide whether or not the claim is invalid.

14           The law says that it's my role to define the terms  
15 or the language of the claims, and it's your role to apply  
16 my definitions to the issues that you've been asked to  
17 decide in this case.

18           Therefore, as I explained to you at the start of  
19 the case, I have already determined the meanings of certain  
20 claim language, and I've provided a chart showing you those  
21 constructions or definitions in your juror notebooks.

22           My definitions of certain claim terms, as well as  
23 certain definitions that have been agreed to by the  
24 parties, are set forth in that chart in your juror  
25 notebooks. You must accept these definitions of these

1 words from the claims as being correct.

2 It's your job to take these definitions and apply  
3 them to all the issues that you're deciding, including the  
4 issues of infringement and invalidity.

5 During your deliberations, you must apply the  
6 meanings of those defined claim terms as I have supplied  
7 them to you and as set forth in your juror notebooks.

8 Now, for any of the words in the claims for which  
9 I have not provided you with a definition, you should apply  
10 their plain and ordinary meaning -- meaning, as understood  
11 by one of ordinary skill in the art, which is to say, in  
12 the field of the technology of the patent at the time of  
13 the alleged invention of the '106 patent.

14 The meaning of the words of the patent claims must  
15 be the same when deciding issues of infringement and when  
16 deciding issues of invalidity.

17 My interpretation of the language from the claims  
18 should not be taken by you as an indication that I have a  
19 view regarding the issues of infringement or invalidity.  
20 The decisions regarding infringement and invalidity are  
21 yours to make.

22 I'll now instruct you on specific rules that you  
23 must follow to determine whether a Plaintiff has proven  
24 that Defendant has infringed Claims 1 through 6 and Claim 9  
25 of the '106 patent.

1           To prove infringement, the Plaintiff, PPS Data,  
2 must persuade you that it is more likely than not that  
3 Defendant, Jack Henry & Associates, has infringed these  
4 asserted claims. You must decide whether Defendant has  
5 made, used, sold, or offered to sell within the United  
6 States a product or a service covered by the asserted  
7 claims.

8           You must compare the asserted claims to the  
9 accused products and services to determine whether every  
10 requirement of the claim is included in the accused  
11 products.

12           To prove infringement, Plaintiff must prove by a  
13 preponderance of the evidence that the Defendant made,  
14 used, sold, or offered to sell within the United States an  
15 accused product that includes each and every element or  
16 limitation of the asserted claims.

17           In determining whether an accused product  
18 infringes the asserted claims, you must compare the accused  
19 product with each requirement as recited in the claims.  
20 The proper comparison is between the language of the claims  
21 and the accused products.

22           A claim requirement is present if it exists in the  
23 accused product, as I've explained the language of the  
24 requirement to you, or if I did not explain it to you, as  
25 would be understood by one of ordinary skill in the art.

1           If the accused product omits even one single  
2 requirement of a claim, then you must find that the accused  
3 product does not infringe the claim.

4           The Plaintiff in this case has asserted multiple  
5 claims against the Defendant. For purposes of determining  
6 infringement, each claim is to be effectively treated as if  
7 it were a separate patent, with infringement determined  
8 separately on a claim-by-claim basis.

9           As a result, what a patent covers is -- or rather,  
10 what a patent covers in total is ultimately dependent upon  
11 what each of its claims cover.

12           Additionally, for purposes of determining  
13 infringement, the only correct comparison that you should  
14 make is between the language of the asserted claims and the  
15 accused products of the Defendant. That is important.

16           In determining infringement, you are not required  
17 to find that the Defendant intended to infringe the claims  
18 of the patent-in-suit. A Defendant may infringe a patent  
19 without any intent to infringe the patent or without any  
20 knowledge that the patent, in fact, exists.

21           Additionally, to infringe a claim, which merely  
22 recites the capability to perform a claimed function, an  
23 accused device need only be capable of operating in the  
24 described manner.

25           In fact, depending on the claims, an accused

1 device may be found to infringe if it is reasonably capable  
2 of satisfying the claim limitations, even though it may  
3 also be capable of non-infringing modes of operation.

4 In the context of this case, the term "capable of"  
5 means that the accused products must have program code  
6 present that satisfies the claim limitations.

7 Now, the question of invalidity of a patent claim  
8 is determined from the perspective of a person of ordinary  
9 skill in the art in the field of the claimed invention as  
10 of the time of the invention.

11 In deciding the level of ordinary skill in the  
12 field of the invention, you should consider all the  
13 evidence introduced in -- at trial -- at trial, including,  
14 but not limited to, the levels of education and experience  
15 of the inventors and other persons actively working in the  
16 field, the types of problems encountered in the field,  
17 prior art solutions to those problems, rapidity with which  
18 innovations are made, and the sophistication of the  
19 technology.

20 You, members of the jury, are to decide the level  
21 of ordinary skill in the art at the time of the invention.

22 Now, the Defendant also contends that the '106  
23 patent is invalid because it claims subject matter that is  
24 not eligible for patent protection.

25 A patent claim is not eligible for protection if

1 the patented claims involve no more than the performance of  
2 activities which a person of ordinary skill in the art  
3 would have considered well-understood, routine, and  
4 conventional at the time the patent application was filed.

5 The patent application for the '106 patent was  
6 filed on April the 28th, 2000.

7 In determining whether a patent claim involves the  
8 performance of well-understood, routine, and conventional  
9 activities, you may consider statements made in the  
10 patent's specification, as well as evidence of the prior  
11 art.

12 In patent law, a system, device, method,  
13 publication, or patent that pre-dated the patent claim at  
14 issue is called prior art.

15 Prior art may include items that were publicly  
16 known or that have been used or offered for sale or  
17 references, such as publications or other patents, that  
18 disclose the claimed invention or elements of the claimed  
19 invention.

20 To be prior art, the item or reference must have  
21 been made, known, used, published, patented, or filed as a  
22 patent application before the application date of the '106  
23 patent.

24 To succeed on its claim for invalidity, the  
25 Defendant must show by clear and convincing evidence that



1 the elements of the asserted claims, when taken  
2 individually or when taken as an ordered combination,  
3 involve only activities which a person of ordinary skill in  
4 the art would have considered to be well-understood,  
5 routine, and conventional as of April the 28th, 2000, which  
6 is the application date for the '106 patent.

7           Whether a particular technology was  
8 well-understood, routine, and conventional goes beyond what  
9 simply was known in the prior art. The mere fact that  
10 something is disclosed in a piece of prior art does not  
11 mean that it was well-understood, routine, and  
12 conventional.

13           At the same time, the specification of the '106  
14 patent may be such evidence, if you find that the  
15 specification shows that the elements of the asserted  
16 claims were well-understood, routine, and conventional.

17           If you award damages in this case, they must be  
18 adequate to compensate the Plaintiff for any infringement  
19 of the asserted claims that you may find. You must not  
20 award the Plaintiff more damages than are adequate to  
21 compensate for the infringement, nor should you include any  
22 additional amount for purposes of punishing the Defendant.

23           Damages are not meant to punish an infringer.  
24 Your damages award, if you reach that issue in this case,  
25 should put the Plaintiff in approximately the same

1 financial position that it would have been in had the  
2 infringement not occurred.

3           Plaintiff has the burden to establish the amount  
4 of its damages by a preponderance of the evidence. In  
5 other words, members of the jury, you should award only  
6 those damages that the Plaintiff establishes that it, more  
7 likely than not, suffered as a result of the Defendant's  
8 infringement of the claims of the '106 patent, the asserted  
9 claims of the '106 patent.

10           While the Plaintiff is not required to prove the  
11 amount of its damages with mathematical precision, it must  
12 prove them with reasonable certainty. Plaintiff is not  
13 entitled to damages that are remote or speculative.

14           The patent laws specifically provide the damages  
15 for infringement may not be less than a reasonable royalty.

16           A reasonable royalty is the amount of royalty  
17 payment that a patentholder and the alleged infringer would  
18 have agreed to in a hypothetical negotiation taking place  
19 at a time immediately prior to when the infringement first  
20 began.

21           In considering this hypothetical negotiation, you  
22 should focus on what the expectations of the patentholder  
23 and the alleged infringer would have been had they entered  
24 into an agreement at that time and had they acted  
25 reasonably in their negotiations.

1           In determining this, you must assume that both  
2 parties believed the '106 patent was valid and infringed  
3 and both parties were willing to enter into an agreement.

4           The reasonable royalty that you determine must be  
5 a royalty that would have resulted from the hypothetical  
6 negotiation and not simply a royalty that either party  
7 would have preferred.

8           In this case, the Plaintiff seeks a reasonable  
9 royalty. A reasonable royalty may be in the form of a lump  
10 sum where the patent owner receives a single, upfront  
11 payment as a royalty payment. You must be careful to  
12 ensure that the award is no more or no less than the value  
13 of the patented invention.

14           The patent law does not allow you to use the value  
15 of an entire product or a service or the value of the  
16 entire market to determine damages unless you find that the  
17 Plaintiff has proven that the patented feature of the  
18 product drives consumer demand for the entire product or  
19 service.

20           Evidence of things that happened after  
21 infringement first began can be considered in evaluating  
22 the reasonable royalty, but only to the extent that the  
23 evidence aids in assessing what the royalty would have  
24 resulted -- what royalty would have resulted from the  
25 hypothetical negotiation.

1           In determining the reasonable royalty, you should  
2 consider all the facts known and available to the parties  
3 at the time infringement began.

4           Some of the kinds of factors that you may consider  
5 in making your determination are:

6           (1) the royalties received by the patentee for the  
7 licensing of the patent-in-suit, proving or tending to  
8 prove an established royalty;

9           (2) the commercial relationship between the  
10 licensor and licensee, such as, whether they are  
11 competitors in the same territory in the same line of  
12 business or whether they are inventor and promoter;

13           (3) the utility and advantages of the patent  
14 property over the old modes or devices, if any, that have  
15 been used for working out similar results;

16           (4) the established profitability of the product  
17 made under the patent, its commercial success, and its  
18 current popularity;

19           (5) the nature of the patented invention, the  
20 character of the commercial embodiment of it as owned and  
21 produced by the licensor, and the benefits to those who  
22 have used the invention;

23           (6) the extent to which the infringer has made use  
24 of the invention and any evidence probative of the value of  
25 that use;

1           (7) the portion of the realizable profit that  
2 should be credited to the invention as distinguished from  
3 non-patented elements, the manufacturing process, business  
4 risks, or significant features or improvements added by the  
5 infringer.

6           Now, members of the jury, no one of these factors  
7 is dispositive, and you can and you should consider all the  
8 evidence that's been presented to you in this case on each  
9 of these factors.

10           You may also consider other factors which, in your  
11 mind, would have increased or decreased the royalty the  
12 infringer would have been willing to pay and the  
13 patentholder would have been willing to accept acting as  
14 normally prudent business people as a part of this  
15 hypothetical negotiation.

16           The law requires that any damages awarded to the  
17 Plaintiff correspond to the value of the alleged invention,  
18 not to the value of features of Defendant's accused  
19 products that are not covered by the '106 patent. This is  
20 particularly true where, as here, the accused product has  
21 multiple features and multiple components.

22           Should you find any amount of damages to be due as  
23 compensation for infringement, then you should only award  
24 those damages which occurred from and after but not before  
25 January the 10th, 2012.

1           Now, with these instructions, members of the jury,  
2 we're now ready to hear closing arguments from the  
3 attorneys in this case.

4           Mr. Maddox, Plaintiff may now present its first  
5 closing argument to the jury.

6           MR. MADDUX: Thank you, Your Honor.

7           THE COURT: You may proceed when you're ready.

8           MR. MADDUX: Ready, Your Honor.

9           Good morning. I would like to begin by thanking  
10 you on behalf of Danne Buchanan, PPS Data, for NetDeposit,  
11 and from me and the trial team for your time and your  
12 attention and the work we saw you putting in every day in  
13 your books and paying attention.

14           You were thrown into this patent world, which must  
15 have seemed strange. You were very devout. You were given  
16 special meanings for words when they appeared in a patent  
17 that may be different than they appear in the outside  
18 world. And then for the last three days, you listened to  
19 hours of testimony about check processing, not the most  
20 interesting topic in the world.

21           So thank you for hanging in there through all of  
22 that.

23           This is my last chance to speak with you. And by  
24 now, you know well that what matters is the evidence you  
25 saw and heard and not what the lawyers say.

1           So I'm not going to speechify at you, but I'm  
2 going to review with you some of the evidence that we think  
3 is going to be important and useful in your deliberation  
4 process.

5           In our case, you heard from four witnesses. There  
6 were some smaller witnesses, but four main witnesses.

7           And the first one you heard from was Mr. Danne  
8 Buchanan. He was the inventor. He's the one who came up  
9 with a way to unchain banks from paper checks and planes,  
10 trains, and automobiles, and MICR reader/sorters and that  
11 sort of thing.

12           He figured out the architecture that allowed banks  
13 to do everything they needed to do, subject to all the  
14 regulations and business requirements. Everything they did  
15 with paper checks, but to do it with electronic data and  
16 images, and to do it all faster, cheaper, and safer.

17           From the evidence you heard, you can see that his  
18 was the first such system. He was the pioneer. Others had  
19 been experimenting with images, like Mr. Garrett, and  
20 scanners and different parts of the process, but  
21 Mr. Buchanan was the first one to pull it all together and  
22 make it work in the real world for banks.

23           From the very first step of the bank -- of the  
24 check being deposited at a remote site, to the very last  
25 step of the check image and check data being presented to

1 the Federal Reserve Bank or the maker bank to get paid, and  
2 to make everything in between meet the bank's requirements  
3 for accounting and operations, as well as regulatory  
4 requirements.

5 Now, that was a big deal, not because some lawyer  
6 is standing here and saying it was a big deal and not even  
7 because Mr. Buchanan stood here and said it was a big deal.

8 You know this is a big deal because Jack Henry's  
9 internal documents that we showed you during the trial say  
10 so. Indeed, it was a big deal even years after the  
11 invention in 2000.

12 You may recall the testimony of Mr. Moland, who  
13 had a blog he published for the company, and testified that  
14 RDC, remote deposit capture, was regarded as revolutionary  
15 in 2005. That's even five years later. Mr. Buchanan was  
16 way ahead of his time.

17 You also heard the corporate representative for  
18 Jack Henry, Mr. Phillips, testified that in the mid-2000s,  
19 well after the invention, Jack Henry's customers came to  
20 Jack Henry and said, you need to get into this -- this RDC  
21 field, it is going to be a big deal. 2005 it was still  
22 going to be a big deal.

23 Mr. Buchanan was before his time.

24 Then you met Mr. Jeff Johnson, and he's the  
25 president of PPS Data today, and he worked with



1 Mr. Buchanan. And he told you a bit about NetDeposit's  
2 growth and establishment as the technological leader in the  
3 2000s, and he took you through NetDeposit's successful  
4 settlements with other players in the field for compromised  
5 royalties.

6 And then we got you into the patent itself with  
7 Dr. Michael Shamos. And Dr. Shamos is the only expert  
8 witness in this case who is not only an expert in computers  
9 but an expert in the application of computers to e-commerce  
10 and electric payment options.

11 For nearly 20 years he has taught a course  
12 specifically in electronic payment solutions at Carnegie  
13 Mellon University and at the University of Hong Kong. He  
14 founded and built the e-commerce department at his  
15 university.

16 Now, this is in contrast with Dr. Michalson  
17 because Dr. Michalson has no experience or expertise in the  
18 application of computers to check processing, electronic  
19 payments, e-commerce, or e-banking. His expertise is a  
20 pure computer science expertise, sort of like Mr. Boyd's  
21 expertise was a computer -- well, sort of like Mr. --  
22 Mr. Boyd testified about code, but when it came to the real  
23 world of banking like when a check clears, he was kind of  
24 clueless.

25 So the first thing that Dr. Shamos did was he took

1 you through the Jack Henry products that we say infringe  
2 the product -- infringe the patent.

3 And here they are. You've heard them many times.  
4 I will not recite them for you again. But these are the  
5 six products. And when we talk in the trial and talk in  
6 closing, these are -- we call them the accused products.  
7 They're all RD -- all RDC products of Jack Henry.

8 Then Dr. Shamos began at the beginning of Claim 1  
9 with exactly what it took to infringe.

10 May I have PTX -- thank you.

11 And he started you with this language here, and he  
12 took you through a computer-readable medium having a  
13 program code, and when it's executed, that program code,  
14 when executed, capable of causing a machine to perform the  
15 following method steps.

16 So that it's a -- a system run by a program code,  
17 and the system itself has to be capable of doing these  
18 steps.

19 You'll note that there's no code in our claim. In  
20 fact, there's no code -- and I mean that almost looked like  
21 gibberish that Dr. Michalson talked about. There's no code  
22 anywhere in the patent.

23 There's functionality. There's requirements.  
24 There's system requirements. There's system sequencing,  
25 what -- whatever. There's many things, but there's no

1 code.

2           So what we're saying is it's not any particular  
3 kind of transaction that is the infringing thing here.  
4 What is infringing is that Jack Henry's EPS system is a  
5 computer system run by code that one -- when executed,  
6 does -- is capable of doing these things.

7           It's Jack Henry's EPS system that infringes. It  
8 is an infringing system. And, as you heard the Judge say,  
9 any time you make, use, or sell an -- a patented invention,  
10 that's infringement.

11           They used this system many, many times over. They  
12 use an infringing system many times over.

13           The evidence you heard about what this system was  
14 capable when up and running, what it was programmed to be  
15 capable of, was fairly extensive.

16           And Dr. Shamos took you through Jack Henry's  
17 system, and he explained this was not his proof on the  
18 elements, but this was his background that you had the  
19 remote site, the central site, and then over there the  
20 maker banks. And the central site separate from the remote  
21 site, et cetera.

22           And then Dr. Shamos got into the  
23 element-by-element analysis of the claims. For instance --  
24 may I have PTX-2, Column 24? Yes.

25           I'm going to talk mostly about two elements or

1 limitations that seem to be the center of the dispute most  
2 in trial.

3           This first limitation I have here, we can call  
4 this the first transmitting limitation. You heard a lot  
5 about transmissions, and there have to be two. This is the  
6 first one.

7           And you can see, it says: The central system  
8 transmitting at least some of the deposit information of  
9 each different deposit transaction to the bank of first  
10 deposit.

11           Now, Dr. Shamos took you through this, and he  
12 showed you where in Jack Henry's own product manual, own  
13 user manual, it says: This is how you can transmit deposit  
14 data to the bank of first deposit.

15           May I have PDX-189?

16           This, in fact, was a slide he showed you, but this  
17 EPS financial institution reports -- you can see it. It  
18 says: Several reports are available that allow financial  
19 institution users to monitor transaction activity, review  
20 intraday and historical information, et cetera.

21           And the next slide.

22           He showed you some more excerpts from the user  
23 manual. This was direct evidence of what the system is  
24 capable of, according to Jack Henry itself.

25           But in addition to Dr. Shamos, each and every one

1 of Jack Henry's witnesses on cross-examination admitted  
2 that the EPS system was capable of transmitting such  
3 deposit information to the bank of first deposit.

4 For instance, we had Mr. Boyd from Day 2.

5 So the financial institution's EPS account is  
6 where the financial institution will see what checks have  
7 been processed by EPS, right?

8 Yes.

9 And, again, Mr. Boyd -- I beg your pardon. 28 of  
10 14. There we go.

11 Mr. Boyd, I asked in your deposition: Can you  
12 see -- you can read down a little bit. It says: So, yes.  
13 In the EPS account, we have the record of when the  
14 merchant, you know, deposited these transactions into the  
15 EPS -- into the financial institution's EPS account.

16 We can go on to Mr. Moland, Day 2.

17 I beg your pardon. That seems to be  
18 Dr. Michalson. May we have Mr. Moland? Here we are.

19 And another thing a financial institution can do  
20 through its offered EPS access portal is to receive various  
21 reporting on its customers' check transactions, right?

22 Yes.

23 Even Dr. Michalson admitted this.

24 And you can see here in his testimony, I asked him  
25 about this. I said: So what you're talking about is

1 deposit information for the bank of first deposit? And I  
2 asked him: Doesn't the EPS system have the capability, the  
3 way it's programmed, to transmit that deposit data back to  
4 the first -- bank of first deposit?

5 And he said: Well, no, not as part of the deposit  
6 process. And then there was some objections, and  
7 eventually the Judge restated the question of: It's a  
8 straightforward question. Does the system have that  
9 capability? You need to answer that question.

10 And he said: Well, yeah, it is possible to get  
11 information about deposits back from the system, yes.

12 And then I asked him: And that information is  
13 transmitted to the bank of first deposit, yes?

14 And he said: It is. It is sent in response to a  
15 user request.

16 And I said: Only in response to a user request?  
17 Do you know?

18 And he said: Well, I believe for some entities,  
19 it can be sent on a periodic basis.

20 So the system is capable of that, as well?

21 Yes.

22 EPS. Jack Henry's system was clearly capable of  
23 transmitting deposit information to the bank of first  
24 deposit, both through the portal and through the reports.

25 Frankly, how could it have been otherwise.

1 There's no way banks of first deposit would just send off  
2 millions of dollars of checks to Jack Henry and say, well,  
3 I hope you tell me about them some day. Obviously, this  
4 is -- this is quite capable -- this is a capability of the  
5 system.

6 Now, the second disputed limitation -- may I have  
7 PTX-2?

8 It comes from the claim, and you can see it here.  
9 The central system -- system, transmitting electronic check  
10 data and check image data directly or indirectly to the  
11 maker bank or to the Federal Reserve.

12 This is the part of the process where the check  
13 image and data gets basically presented for payment. So,  
14 frankly, of course, the system does that.

15 And, again, Dr. Shamos provided you with documents  
16 and the testimony from Jack Henry's employees that  
17 confirmed this. And, again, every single Jack Henry  
18 witness admitted on cross -- cross-examination that the EPS  
19 system, as programmed, was capable of transmitting these  
20 electronic check data and check image in what were called  
21 Check 21 files.

22 And, in fact, there was talk about them being  
23 called Fed files because they're going to the Fed.  
24 Transmitting these Check 21 files to the Federal Reserve or  
25 the maker banks.

1           May I have Mr. Boyd's testimony from Day 2?

2           Question: Mr. Boyd, for banking customers, the  
3 Check 21 file with an EPS computer environment may be sent  
4 to a paying bank to clear the check, right?

5           That's correct.

6           Okay. That's the maker bank.

7           And Mr. Boyd's next testimony: One of the outputs  
8 is to the direct to Fed, which is the Federal Reserve Bank,  
9 right?

10          Mr. Boyd: That's correct.

11          So Jack Henry's EPS system has the capability of  
12 taking Check 21 files and sending them direct to Fed,  
13 right?

14          For direct to merchants, yes.

15          May I have Mr. Moland's testimony?

16          Question: One downstream process after EPS has  
17 created the Check 21 files is to send the Check 21 files  
18 to, for example, a Federal Reserve Bank?

19          Yes.

20          And Mr. Moland's testimony again: Sure. But do  
21 you know that EPS can send it to, meaning the Check 21  
22 transactions, to a Federal Reserve Bank?

23          Yes.

24          Even Dr. Michalson, I asked him: The Check 21  
25 file produced by the EPS system can only go to one place,



1 correct?

2 Correct.

3 And that can be the Federal Reserve Bank?

4 It can be.

5 It can be the maker bank?

6 It can be one of a variety of different banks.

7 So it can be the maker bank?

8 Yes, if it knew what the maker bank was.

9 And this is a system that is capable of sending  
10 the check image and -- and data to either -- directly or  
11 indirectly to a Federal Reserve Bank or a maker bank.

12 THE COURT: You've used 17 minutes, counsel.

13 MR. MADDOX: Thank you.

14 Finally, Dr. Shamos gave the evidence from Jack  
15 Henry's own description of its EPS system about the -- the  
16 repeated list of internal systems, the MICR reader, cash  
17 deposit system, et cetera. And he explained why and how.  
18 And you may recall his slides.

19 The central system in his system was -- which is  
20 the Kansas site, was separate from the bank of first  
21 deposit's MICR system, accounting system, cash system,  
22 float processing system. They were all separate. That was  
23 the whole point of the invention, that they get bypassed  
24 and not used.

25 You then heard from Dr. Keith Ugone, who I hope

1 you think did a good job explaining some of the factors  
2 His Honor just discussed with you.

3 And I should point out that Dr. Ugone's testimony  
4 is not rebutted by any expert. They could not find an  
5 expert to come here and say, no, Dr. Ugone got it wrong.  
6 It shouldn't be 1.4 billion transactions. They couldn't  
7 find an expert to come here and say, no, Dr. Ugone got it  
8 wrong. It shouldn't be a penny.

9 And so they also couldn't find an expert to come  
10 here and say, and so, Dr. Ugone got it wrong. It should  
11 not be \$14 million. There's no evidence to that. We'll  
12 hear attorney argument about it, but there's no evidence.

13 Now, finally, let's talk about the code -- the  
14 source code. This was a red herring from the beginning.

15 And you were finally going to get the payoff from  
16 this long promised code thing from Dr. William Michalson.

17 And you may recall, he said: Ah, I have the code  
18 that shows it cannot infringe. And he took you through a  
19 bunch of snippets.

20 And he said: Well, this code does this, and it  
21 doesn't have anything to do with it.

22 But then he finally got to one, and he said:  
23 Well, this code, MOVEit, it was called, can send the  
24 Check 21 file either to a maker bank or to the Federal  
25 Reserve, but not both.

1           And that's as well may be. You wouldn't have  
2 checks sent to multiple places to get paid. But that's not  
3 the same thing at all as saying the system was not capable  
4 of sending the Check 21 files to the Federal Reserve or to  
5 a maker bank. It's not at all.

6           What's really kind of happening here is Jack Henry  
7 knows its internal documents, and its own employees'  
8 testimony describes all the functionality in the patent.

9           So they've been sort of trying to sell you this  
10 notion that it's not enough that their system is capable of  
11 performing the things in the patent. Somehow PPS Data has  
12 to go to the code and show you the code that makes it  
13 happen.

14           But that's not what the patent claims. The patent  
15 claims a system that is capable of performing these  
16 functions, period.

17           As you saw, the patent is not a code claim. It's  
18 not a programming product. The system, any system, is  
19 capable, if it's -- if a system is capable of doing  
20 something, it's because there's been programming put into  
21 it to do it.

22           You may recall my last question to Dr. Michalson  
23 on cross-examination was whether he could tell me if the  
24 Microsoft Word, word processing, was capable of performing  
25 spell check.

1           And he said: Yes, it is.

2           And he did that without looking at the code,  
3 because he had direct evidence of the functionality.  
4 Either he had read the manual or he had used it.

5           That's what Dr. Shamos has here, direct evidence  
6 of the functionality in Jack Henry's user manuals,  
7 documents, and the testimony of its own employees.

8           Finally, one note, Dr. Michalson's  
9 non-infringement opinions about the other claims, 2 through  
10 6 and 9, all come down to, well, if you don't infringe  
11 Claim 1, therefore, you can't infringe the rest. So if you  
12 find infringement of Claim 1, there's no evidence of  
13 non-infringement of the rest of them, and you should find  
14 infringement on all of them.

15           We suggest that Dr. Shamos's testimony, especially  
16 when corroborated by all the J -- the Jack Henry employee  
17 testimony, makes it very much more than likely that there  
18 was infringement in this case.

19           Thank you.

20           THE COURT: Defendant may now present its closing  
21 argument to the jury.

22           Mr. Heidrick, you may begin when you're ready.

23           MR. HEIDRICK: Thank you, Your Honor.

24           Jay Heidrick on behalf of Defendant, Jack Henry.

25           I first want to begin thanking you, ladies of the

1 jury, for your time and your attention as well. As  
2 Mr. Maddox said, you've heard a lot of different stuff this  
3 week about a lot of different things in a place that seems  
4 foreign to a lot of people who don't normally practice here  
5 like we do every day.

6 I think, as attorneys, we probably take for  
7 granted that things that we're comfortable with and things  
8 that we do and that are just normal nomenclature to us are  
9 foreign to you, and so we take for granted things that we  
10 maybe should take more time to explain or things that we  
11 should offer you more explanation on and give you that  
12 courtesy.

13 And I'm certain that's -- we failed at that this  
14 week at times. And despite that, you've been incredible in  
15 your attention and your effort with this, and I really  
16 thank you for that.

17 And I'd also like to thank Judge Gilstrap and his  
18 staff, as well as opposing counsel, for making a trial go  
19 really smoothly this week, as well.

20 There are two issues for you to remember here.  
21 The first is that Jack Henry does not infringe the patent,  
22 and second, is that the patent is invalid. Those are the  
23 two over -- overarching issues that you just have to  
24 remember as you hear the evidence, as you do your  
25 deliberations, as you hear me talk. The patent is invalid,

1 Jack Henry does not infringe.

2 I'd like to go back to Monday when I had the  
3 opportunity to meet you for the first time, and I gave you  
4 a preview of what this case was going to entail, and that's  
5 the first thing I told you, is that we do it differently.  
6 We don't do what -- what PPS Data's patent says.

7 And I also told you how PPS Data is moving its  
8 fence, how it's breaking its deal with the Patent Office  
9 and trying to cover Jack Henry's products; that the Patent  
10 Office gave it a very narrow, delineated, and then scope of  
11 the invention, and it's trying to expand that.

12 And we've seen that during this trial. And we  
13 just heard from Mr. Maddox who said -- showed you Claim 1  
14 of the claim that says computer-readable program code, and  
15 two breaths later said this isn't about code. The claim  
16 says code in it. The Judge's instructions said code. This  
17 case is all about code.

18 Let's look at Mr. Buchanan, the first witness PPS  
19 Data called. And what did he tell you?

20 He testified that his invention changed the  
21 industry. He talked about how it allowed customers to  
22 deposit checks remotely rather than having to come into the  
23 bank and how it revolutionized everything. He talked about  
24 the fraud monitoring and how it prevented fraud on checks.

25 But you remember when I asked him a very simple

1 question, where does the term remote site appear in the  
2 claims of the patent? The Judge just instructed you the  
3 claims of the invention. Not the figures, not the  
4 descriptions. The claims.

5 And I asked him, where does the term remote site  
6 appear in your -- in your claim? And he kind of hemmed and  
7 hawed and said, well, I can show you where it's at in the  
8 figures. And I said, no, where is it at in the claims? He  
9 couldn't show you because it's not there.

10 And then I asked him, can you tell me where the  
11 term fraud monitoring is and he kind of hemmed and hawed  
12 again. He said that, you know, he wasn't really familiar  
13 with the patent claims. He actually said he'd have to talk  
14 to his patent lawyer or something like that.

15 He claims to have invented this revolutionary  
16 technology, but he doesn't know what's in his own claims,  
17 what's in his own invention, the legal scope of his  
18 invention.

19 And as you know just by reading plain English, the  
20 terms remote and fraud monitoring that Mr. Buchanan talked  
21 about don't appear anywhere in the claims. The claims are  
22 the true legal fence line.

23 NetDeposit may have come up with a great idea, a  
24 great business idea, but that business idea that it tried  
25 to develop is not what is legally protected by the patent.

1 They're trying to expand what's in their claim. They're  
2 breaking their deal with the government to try and cover a  
3 business idea that's just simply not there.

4 Another thing I told you about on Monday is that  
5 PPS Data would not be able to carry its burden of proof to  
6 show infringement because Jack Henry doesn't infringe. It  
7 does it differently.

8 I want to show you the Judge's instructions that  
9 he just read, and you'll have a packet of these.

10 Can I have the ELMO, please?

11 This is the first thing that's important. The  
12 highlighted version. If the accused product omits even a  
13 single requirement of the claim, then you must find that  
14 the accused product does not infringe that claim.

15 That's what I told you on Monday. One difference  
16 is all it takes.

17 Mr. Maddox talked about "capable of" and said this  
18 is not a source code claim. This -- the code doesn't  
19 matter. The Judge's instructions tell you otherwise.

20 In the context of this term, "capable of" means  
21 the accused products must have program code present that  
22 satisfies the limitations.

23 Once you read these instructions and apply them to  
24 the facts of the case, your decision is really easy. Why?  
25 Because the instructions say that PPS Data must prove that



1 the accused products have actual program code in them that  
2 satisfy every limitation of the claim.

3 Remember, it's the claim limitations that  
4 determine infringement. PPS Data has zero proof of any  
5 program code that is present in the accused  
6 instrumentalities, much less code that satisfies every  
7 limitation.

8 Conversely, Dr. Michalson showed you and explained  
9 to you not only that Jack Henry doesn't infringe but how it  
10 can't infringe.

11 PPS Data can't show you the necessary evidence.  
12 Game over. The code wins.

13 But let's talk a little bit about what PPS Data  
14 did try to show you. And I was -- as I was thinking about  
15 this last night of how to relay this to you, the thing that  
16 kept popping into my mind was a few weeks ago I took my  
17 seven-year-old son to see Spiderman, the new Spiderman  
18 movie.

19 At the end of the movie, Spiderman defeats the  
20 villain. And he goes back to New York, and he's swinging  
21 through Times Square with Mary Jane. And, all of a sudden,  
22 they see this video in Times Square of Spiderman being the  
23 villain, of doing something wrong.

24 And everyone is looking up. And, Spiderman, why  
25 would you do this? And what had happened was, there was

1 another villain who had been recording Spiderman the entire  
2 time and had spliced out different things and taken  
3 snippets of little things and strung them all together and  
4 was able to create a video that made it look like Spiderman  
5 was doing something wrong.

6           And I went back after I thought of that, and I  
7 looked at Dr. Shamos's presentation from Tuesday, all these  
8 manuals that they say exist. And I looked at his citations  
9 from the sections where he tried to explain how Jack  
10 Henry's products infringe.

11           And you may have noticed this, too. But  
12 Dr. Shamos relied on user manuals, 10 different manuals  
13 that he pieced together for his infringement analysis. He  
14 didn't show you a single manual and take you through it.

15           He took a little bit from here, a little bit from  
16 there, threw in some deposition quotes, into this big  
17 mixing bowl. Voila, "capable of."

18           I promise you that if someone was recording me  
19 this entire week, you could take pieces of what I said  
20 throughout the entire week and you could create a recording  
21 that says -- that makes it sound like I'm saying Jack Henry  
22 infringes. I would never say that, you know that, and I  
23 didn't say that.

24           But if you get enough small pieces of stuff from  
25 everywhere, you can create any picture you want. But that

1 picture isn't always the truth.

2 I told you on the first day, too, the claim  
3 requires two transmissions, one to the bank of first  
4 deposit. And PPS Data used this piecemeal approach to  
5 argue that a reporting function that may never leave Jack  
6 Henry and is sent to a customer is a transmission to the  
7 bank of first deposit.

8 But they never tied anything up with that. They  
9 didn't show you that the reporting is part of the deposit  
10 transactions.

11 As the Judge said, the preamble is limiting in  
12 this case. The preamble talks about deposit processing.  
13 They didn't show you how this reporting function is part of  
14 the deposit processing process. They didn't show you how  
15 the reporting is done and how a bank goes about to get --  
16 get it by the claim.

17 These -- the reports that they're relying on are  
18 only created after the deposit processing is done. You  
19 know why? Because there's nothing to report until the  
20 process is completed. You cannot create the report until  
21 the deposit is done. They didn't tell you that.

22 And let's take this in -- one of the things  
23 Judge Gilstrap read to you in his instructions is common  
24 sense, and that is something that probably too much gets  
25 lost a lot of times in cases.

1           And let's take their argument to this legal -- or  
2 to its logical conclusion. Let's use common sense.

3           This is from Dr. Shamos's presentation, Kevin  
4 Moland. It talks about, if a customer wanted to access  
5 check information of any transactions with that bank, it  
6 could, right?

7           Answer, I believe that's true. I don't know  
8 that -- yes, yes, it can.

9           So under this scenario, deposit process is  
10 completed, it's done. There is this reporting function  
11 that sits out there.

12           Six months later a customer wants to log in  
13 through the portal, wants to pull up, did the check I sent  
14 to my nephew clear last? I can't recall when that was.  
15 Looks at it, downloads it, maybe even prints it. According  
16 to them, looking at it six months later is part of that  
17 deposit process.

18           That's not common sense. And even what Mr. Maddox  
19 just showed you with the slides before, if you read the  
20 language in there, it talks about the financial  
21 institution's user can -- can look up -- the user can pull  
22 these down, the user can get these reports. That's the  
23 user using that, not the bank. Not at least what he just  
24 showed you. It's nothing more than the box score after the  
25 game is over.

1           Now, let's contrast that with Jack Henry's case.  
2 We showed you one manual. That was representative of all  
3 the products. We started, and you remember, there was  
4 probably -- there was like a log-in screen, and Mr. Wietjes  
5 asked Dr. Michalson, is this the source code?

6           He said, no, this is what you see. It's the HTML  
7 representation of it.

8           And so we went there and we showed you how a user  
9 would log in, where she would put her user name and  
10 password in.

11           And then we stopped, and it got kind of jumbled  
12 because we were going back and forth. We said Step 1,  
13 here's where you log in. Step 2, here's the source code  
14 that shows that. Here's the next step in the -- in the  
15 process. Here's the source code. Here's the next step.  
16 Here's the source code. And we went through all of that  
17 with one manual.

18           Dr. Michalson showed you how the Check 21 file  
19 goes to one location, one transmission. Why didn't  
20 Dr. Shamos just look at the source code? That's exactly  
21 what the claim says. Program code. And we made it  
22 available to him. But he testified that he didn't need it.

23           If you recall his testimony, one of the first  
24 things he talked about was how massive the written file was  
25 in this case and how he had to scour over all of the --

1 through the manuals and paper that Jack Henry produced and  
2 PPS Data even scoured the Internet making print-offs that  
3 he had to review all those things.

4           And when he was asked by PPS Data's counsel as to  
5 why he didn't just look at the source code, he said, I  
6 didn't need to. I had all the stuff in the manuals that I  
7 needed. I didn't need to go back and look at things.  
8 Okay. Well, let's use a little more common sense here.

9           So rather than just spending a few hours on a  
10 claim that talks about program code to go -- rather than  
11 just spend a few hours to go look at the code, Dr. Shamos  
12 spent days, weeks, however long, scouring through all these  
13 manuals to find snippets of what he could use. He chose to  
14 spend that time, instead of just seeing what the code says.

15           Why is that? Why go through all that work to  
16 review those things when you could have just looked at the  
17 code? Because he didn't want to. He knew if he went and  
18 looked at the code and said -- and he didn't like what it  
19 said, there was no getting around that.

20           But he knew that if he could take the manuals and  
21 perform the Spiderman analysis, take a little bit from  
22 here, little bit from there, throw in some depos, throw it  
23 in the mixing bowl, throw it all together, and say, look,  
24 "capable of," he knew he couldn't get out of it if he  
25 looked at the code.

1           It took Dr. Shamos three hours and 122 slides to  
2 spell out his infringement theory, and he still couldn't  
3 show it.

4           It took Jack Henry's expert, Dr. Michalson, 25  
5 minutes, one manual, and four -- four to five citations to  
6 the source code to explain to you why Jack Henry can't  
7 infringe.

8           And when PPS Data examined him about the source  
9 code, it wasn't about the content of the code. It wasn't  
10 about his analysis of the code. They just asked him why he  
11 didn't review all of the code. It was over a million lines  
12 of code here. They knew they couldn't challenge the  
13 content of the code. That's why they didn't go after it.

14           The jury instructions say that PPS Data must show  
15 you that the accused instrumentalities have program code  
16 present that satisfy the claim limitations.

17           Like I told you on Monday, the code always wins.  
18 PPS Data has no code. Jack Henry has the code. Jack Henry  
19 wins.

20           PPS Data also has not shown you a single  
21 infringing transaction.

22           Would you -- the next slide.

23           You may recall this. This is the hypothetical  
24 where I took Dr. Shamos through the on-us items, and this  
25 is where I said: We both bank at First State Bank, and I

1 write you a check and you use Jack Henry's systems to  
2 deposit at First State Bank. And the check goes to First  
3 State Bank, and it goes out of my account and into his.  
4 And there's only one bank that's used.

5 Let's go to the next slide, please.

6 And after I took Dr. Shamos through this analysis,  
7 I asked him if this type of on-us transaction would meet  
8 the limitations of Claim 1. And he said: It would not  
9 meet the limitations of Claim 1 because it's an on-us  
10 transaction.

11 Well, I wanted to make sure this wasn't a  
12 hypothetical situation, that this wasn't something that we  
13 were just dealing with in a vacuum.

14 And I said: Does Jack Henry process transactions  
15 like this?

16 He said: I would assume they do.

17 Then we talked a little bit about the Fed and  
18 why -- why would someone for an on-us transaction send  
19 something to the Fed.

20 And he said: They wouldn't.

21 And I said: Can you name a single Jack Henry bank  
22 client that instructs Jack Henry to send the file to the  
23 Fed as opposed to send it back to us for on-us items?

24 And he said: No, I can't.

25 So he admits that on-us items don't meet the



1 limitations of Claim 1. He admits Jack -- those  
2 transactions are processed by Jack Henry.

3 We also talked about the bank or non-bank -- the  
4 direct merchant clients, which you also saw in Mr. Boyd's  
5 testimony. I talked about that with Dr. Shamos. And we  
6 went through and we talked about the merchant customers and  
7 how those don't have contracts directly with Jack Henry.

8 And he admitted he didn't do a separate analysis  
9 for those. He didn't do the basic work required.

10 We took element-by-element, and we talked about  
11 whether or not there would be a bank of first deposit. And  
12 he said -- he admitted that if there is no bank of first  
13 deposit, then Claim 1 cannot be met because there is no  
14 transmission to the bank of first deposit.

15 You may recall on Monday, too, that I said it  
16 would be interesting to see if PPS Data can show you a  
17 single transaction, a single transaction flow that went  
18 through that checked every box, or if Jack Henry could show  
19 even a single customer that checked every box. They were  
20 sitting in the courtroom with all of us. They heard that.

21 And what did we see? We saw pieced together  
22 manuals. We saw snippets of testimony. I would think that  
23 if Jack Henry's system was capable of infringing, as they  
24 say, and there are 1.4 billion transactions at issue, as  
25 they say, that they could have shown you one that checks

1 every box.

2           We did. We showed you how the on-us items don't  
3 infringe. How is it that Jack Henry was able to do that  
4 but PPS Data wasn't? It's easy. The code -- the code  
5 wins, Jack Henry doesn't infringe.

6           Also on Monday, I talked to you a little bit about  
7 the terms that we used in this case and making sure that we  
8 keep bank of first deposit correct because there are a lot  
9 of foreign terms in this case and making sure that we're  
10 using the terms of the patent and not in terms of how those  
11 are used in every day business.

12           Again, they were here the entire time. They heard  
13 me say it. And what did we hear from PPS Data? Did you  
14 hear the delineations about how a particular bank term is  
15 used in a particular transaction or how it's used to  
16 delineate anything other than an overarching 50,000-foot  
17 level?

18           But my concerns were real. Here's an example of  
19 what happened on Tuesday.

20           On the left is Dr. Shamos's testimony. There was  
21 some testimony that was read into the -- into the record.  
22 And one of them was from Ms. Malini Boddu. She's a  
23 programmer with Jack Henry. And Dr. Shamos relied on this  
24 during his direct testimony. And in Malini's -- or in  
25 Ms. Boddu's testimony, she talked about how there is a file

1     that is sent to the bank.

2             And then in the direct testimony, Dr. Shamos was  
3 asked: And the reference to the bank there, what is that  
4 referencing?

5             And he said: Oh, the maker bank.

6             I said -- and we went on on cross-examination, if  
7 you look at that on the right, I asked him where he got  
8 that. How could he testify that that was the maker bank  
9 versus what was read?

10            At the very end, I asked him: So this very well  
11 could be the bank client that we just talked about, as  
12 well, couldn't it?

13            I suppose it could.

14            This is just another one of many examples of PPS  
15 Data grabbing for any piece it can put together, another  
16 example of it trying to move its fence.

17            Let's talk a little bit about the separate from  
18 the bank of first deposit that was at issue yesterday. And  
19 you may recall this took up the bulk of Dr. Michalson's  
20 testimony or his cross-examination, at least, yesterday.

21            And according to Claim 1, the central system has  
22 to be separate from the enumerated systems for a bank of  
23 first deposit.

24            And Dr. Michalson opined that Jack Henry works on  
25 behalf of the bank of first deposit. It works for the bank

1 of first deposit. Therefore, the systems that are at  
2 Jack Henry are not separate from those systems for a bank  
3 of first deposit.

4 "For" is not a construed claim term in this case.  
5 And Judge Gilstrap instructed you that you should apply the  
6 ordinary and plain meaning as seen by one of a person of  
7 ordinary skill in the art.

8 The word "for" is not the word "of." For example,  
9 I would much rather make a meal for a friend than I would  
10 make a meal of a friend. "For" and "of" are different.

11 This is just another reason why Jack Henry does  
12 not infringe.

13 I want to look at the damages issue now. We'll  
14 talk a little bit about that and talk about  
15 Judge Gilstrap's instructions to you on that angle.

16 And here's the first instruction.

17 May I have the ELMO, please? Thank you.

18 The first thing is that the -- PPS Data is not  
19 required to prove its damages with mathematical precision.  
20 It must prove them with reasonable certainty. The  
21 Plaintiff is not entitled to damages that are remote or  
22 speculative.

23 And that's important because when we read the  
24 next -- I'm trying to get them both on the same page for  
25 you here.

1           This is important on the remote and speculative,  
2 because the law requires that any damages awarded to  
3 Plaintiff correspond to the value of the alleged invention,  
4 not to the value of features of Defendant's accused  
5 products that are not covered by the '106 patent.

6           This is particularly true where, as here, the  
7 accused product has multiple features and multiple  
8 components.

9           THE COURT: You have five minutes remaining,  
10 counsel.

11          MR. HEIDRICK: Thank you, Your Honor.

12          As the instruction says, you can't award damages  
13 that are speculative. We talked earlier that Dr. Shamos  
14 admits that at least some of the transactions don't  
15 infringe Claim 1. Therefore, if they don't infringe  
16 Claim 1, they can't infringe the dependent claims.

17          So we asked Dr. Shamos --

18          If we could switch back, please. Thank you.

19          -- which actual transactions did he say infringe?

20          He said: Well, it's capable of.

21          And I said: Which transactions are claiming  
22 actually infringe here -- out of the 1.4 billion, which  
23 ones?

24          And he said: I didn't do a damage report.

25          And I said: Can you tell the ladies and gentlemen

1 of the jury -- I messed that up -- how many transactions  
2 are processed in the infringing manner, which you just  
3 testified to about earlier?

4 So his pieced together infringement claim, how  
5 many transactions actually infringe?

6 Same answer: No.

7 So since he's not a damages guy, we waited for  
8 their damages guy.

9 And we asked him: So you haven't done any  
10 analysis of your own about transactions that infringe in  
11 this situation or if any do; is that correct?

12 And he said: I would agree with you. I'm not the  
13 technical person.

14 We asked the technical person. He said: It's a  
15 damages issue. We asked the damages guy. He said: It's a  
16 technical issue.

17 What does that mean? It means they haven't shown  
18 any transactions that infringe. They haven't shown proof  
19 of any damages. And they also haven't done it because they  
20 haven't shown infringement.

21 I want to talk briefly about the invalidity of the  
22 '106 patent. And as Judge Gilstrap said, this is our  
23 burden, and we accept it. And it's our burden by clear and  
24 convincing evidence.

25 And it means you have to look at the claim

1 elements alone and in ordered combination. If you look at  
2 the individual limitations of every claim, you'll see that  
3 it's just general computer components functioning in their  
4 ordinary operating ways, things that they've been doing  
5 forever.

6 No one claims they invented the computer. Ron  
7 Titus admitted they did not invent transmission methods.  
8 Everything in this patent existed as of April 2000.

9 So then we looked at the combination. We put them  
10 all together. And we say: Was this invented? Was this  
11 routine and conventional?

12 No.

13 The issue of separate from, you can take a check  
14 processing system that existed at a bank as of April 2000,  
15 all the same components, same processes, same software,  
16 everything, move it across the street, and it's separate  
17 from. That's their inventive concept.

18 Talk -- you heard a little bit about the comparing  
19 elements. Jerry Garrett testified as to SuperImage, how  
20 that was routine and conventional. And 30 banks. He  
21 talked about the -- the functions that it performed, how it  
22 performed -- it was in supermarkets. How remote --  
23 accessing remote information was not new. Sending check  
24 images was not new.

25 Ron Titus testified yesterday, you -- if you have

1 information, you can send it wherever you want.

2 I want to talk real briefly about the verdict form  
3 here.

4 How is my time, Your Honor?

5 THE COURT: You have two minutes, more or less.

6 MR. HEIDRICK: Thank you.

7 Here's the verdict form.

8 Did PPS Data prove by a preponderance of the  
9 evidence that Jack Henry directly infringed any claim of --  
10 any asserted claim of the '106 patent?

11 The answer here is no.

12 Did Jack Henry prove by clear and convincing  
13 evidence that the patent is invalid?

14 The answer to every claim here is yes. Jack Henry  
15 didn't infringe. The patent is invalid.

16 PPS Data told you Jack Henry infringed. Jack  
17 Henry showed you it didn't.

18 As I told you on Monday, this case is very  
19 personal to Jack Henry and to me. For two years, we've  
20 litigated this case, waiting for this day to come before  
21 you and get the justice we've been seeking.

22 I'm done. I have nothing more to give. No more  
23 arguments I can make. Nothing more I can do. I'm giving  
24 it to you now. And I trust in you when you review the  
25 evidence, when you apply the Judge's instructions, that you



1 will come to the correct result and find that Jack Henry  
2 does not infringe, that the patent is invalid.

3 It has truly been an honor to try this case before  
4 you this week. On behalf of myself, our trial team, and  
5 most importantly, Jack Henry, thank you.

6 THE COURT: All right. Plaintiff may now present  
7 its final closing arguments.

8 Mr. Maddox, you have six minutes and 15 seconds  
9 remaining.

10 MR. MADDOX: Thank you, Judge.

11 THE COURT: I'll warn you at two minutes  
12 remaining?

13 MR. MADDOX: That'd be lovely. Thank you.

14 THE COURT: You may proceed.

15 MR. MADDOX: Okay. So a few things. The  
16 fundamental problem with what you just heard is, where is  
17 the code? Where is code?

18 It is undisputed. No one has ever disagreed that  
19 the only way a computer system does something or can do  
20 something is if the computer programmer tells it to.

21 Your iPhone or your phone does a whole bunch of  
22 things. That's because there's code in it telling it to do  
23 something. In fact, in his opening, Mr. Heidrick talked  
24 about how the code controls the computer. Right. The code  
25 controls the program.

1           And then when you see the program and it does  
2 these functions, it's because the code is telling it to.  
3 No one has said otherwise. No one would ever say otherwise  
4 because computers and software don't have their own free  
5 will.

6           Let's look at the Judge's instructions here,  
7 similar to what Mr. Heidrick put up there.

8           And as I indicated just a half-hour ago, the  
9 patent is written in such a way that it's not transactions.  
10 It's not things done and the nature of the transactions.  
11 It's the use of the infringing system.

12           And Judge Gilstrap instructed you, in fact,  
13 depending on the claims, an accused device -- the system --  
14 may be found to infringe if it is reasonably capable of  
15 satisfying the claim limitations, even though it may also  
16 be capable of non-infringing modes of operation.

17           So even if you mistake Mr. Heidrick's  
18 hypotheticals of what if there's no bank of first deposit  
19 at all or what if it's on-us or -- or what if the customer  
20 wants us to send it to Finland -- I mean, it doesn't  
21 matter. They -- their system is infringing, and they used  
22 it over and over and over and over.

23           We are not claiming transmissions -- transactions.  
24 We are claiming the system.

25           With respect to invalidity, you heard an attorney

1 tell you it was routine, conventional, and well-known. You  
2 didn't hear Dr. Michalson say that. You didn't hear  
3 Dr. Michalson say any combination of the claim limitations  
4 were routine, conventional, or well-known.

5 Don't mistake what attorneys say for actual  
6 evidence from competent experts, even -- it's not a  
7 he said/she said. Dr. Michalson didn't say it at all. He  
8 dared not because it's so obviously not true.

9 But the point is, the evidence in the record,  
10 there is none. The only evidence that came in was  
11 Mr. Garrett, who, frankly, a very credible witness. Nice  
12 man. And he was one of those people who was experimenting  
13 with bits and pieces of the process, but you heard that his  
14 system still used a MICR reader to do its thing.

15 And you also heard the images didn't go to the  
16 Fed, they went other places, too -- for storage and  
17 research and other things.

18 And you also heard -- like I said, a very nice  
19 man, but he had approximately 30 banks -- he had two banks  
20 in 1995 -- not really clear in 2000. But even if he had 30  
21 banks in 2000, and as he said, there were about eight to  
22 10,000 banks in the United States, that comes to about .3  
23 percent of the market. .3 percent of the banks out there  
24 does not make something routine, ordinary, and conventional  
25 in the banking industry.

1           There's really no question to us that you cannot  
2 have clear and convincing evidence without expert testimony  
3 saying this is the combination and here is why it's  
4 routine.

5           THE COURT: Two minutes remaining.

6           MR. MADDOX: You don't have any of that, nor based  
7 on Mr. Garrett.

8           In the end -- oh, I beg your pardon. May I have  
9 PTX-288?

10           Here is the exhibit where -- where Dr. Ugone got  
11 his transaction data. And you will see Check 21, there's  
12 no breakdown of Check 21. So even if it mattered what the  
13 transactions were, they didn't give us the information to  
14 distinguish them.

15           But you'll note that they used the EPS system for  
16 ACH transactions and other transactions. Even though they  
17 used our infringing system, we only asked for damages on  
18 the Check 21 transactions. We were being conservative.

19           Finally, in the end, do think back to the opening,  
20 do think back to what we told you we thought the evidence  
21 would show, and think about whether the evidence did show  
22 that. And also recall the extent to which basically the  
23 response was indignation and counter accusation.

24           We've all in life dealt with someone, whom when  
25 you confronted them with it, gets very indignant and very

1 accusatory and starts talking a mile an hour. This is  
2 Jack Henry's defense. There really is none. Its  
3 employees, its testimony, its user manuals, and common  
4 sense left you no other choice.

5 Thank you.

6 THE COURT: Members of the jury, I'd like to now  
7 give you a few final instructions before you begin your  
8 deliberations.

9 You must perform your duty as jurors without bias  
10 or prejudice as to any party. The law does not permit you  
11 to be controlled by sympathy, prejudice, or public opinion.

12 All parties expect that you will carefully and  
13 impartially consider all the evidence, follow the law as I  
14 have given it to you, and reach a just verdict regardless  
15 of the consequences.

16 Answer each question in the verdict form from the  
17 facts as you find them to be in this case, following the  
18 instructions that the Court has given you. As I've said,  
19 do not decide who you think should win and then answer the  
20 questions accordingly.

21 I remind you, your answers and your verdict must  
22 be unanimous.

23 You should consider and decide this case as a  
24 dispute between persons of equal standing in the community,  
25 of equal worth, and holding the same or similar stations in

1 life.

2 This is true in patent cases between corporations,  
3 partnerships, individuals. A patent owner is entitled to  
4 protect its rights under the laws of the United States.  
5 This includes bringing a suit in a United States District  
6 Court for money damages for infringement.

7 The law recognizes no distinction among types of  
8 parties. All corporations, partnerships, organizations,  
9 and individuals stand equal before the law, regardless of  
10 their size, regardless of who owns them, and all such  
11 entities are to be treated as equals.

12 Now, when you retire to the jury room to  
13 deliberate on your verdict, you will each, as I've told  
14 you, have a copy of these final jury instructions to take  
15 with you.

16 If during your deliberations you desire to review  
17 any of the exhibits which the Court has admitted into  
18 evidence and which you've seen during the trial, then you  
19 should advise me by a written note delivered to the Court  
20 Security Officer, and I will then send that exhibit or  
21 those exhibits to you.

22 Once you retire, you should first select your  
23 foreperson and then conduct your deliberations. If you  
24 recess during your deliberations, follow all the  
25 instructions that the Court has given you about your

1     conduct throughout the trial.

2             After you have reached a unanimous verdict, your  
3     foreperson is then to fill in the verdict form with the  
4     answers that reflect your unanimous decisions. Sign the  
5     verdict form, date it, and then advise the Court Security  
6     Officer you have reached a verdict.

7             Do not reveal your answers until such time as  
8     you're discharged, unless otherwise directed by me, and you  
9     must never disclose to anyone, not even to me, your  
10    numerical division on any question.

11            Any notes that you've taken over the course of the  
12    trial are aids to your memory only. If your memory should  
13    differ from your notes, then you should rely on your memory  
14    and not your notes. The notes are not evidence.

15            A juror who has not taken notes should rely on her  
16    own independent recollection of the evidence and should not  
17    be unduly influenced by the notes of other jurors. Notes  
18    are not entitled to any greater weight than the  
19    recollection and -- or impression of each juror who took  
20    them about the testimony and the evidence.

21            If during your deliberations you want to  
22    communicate with me at any time, you should give a message  
23    or a question written by the jury foreperson to the Court  
24    Security Officer who will then bring it to me. I will then  
25    respond as promptly as possible either by writing or by

1 having you brought back into the courtroom where I can  
2 address you orally.

3 I will always first disclose to the attorneys in  
4 the case your question and my response before I answer any  
5 question.

6 After you've reached a verdict and I've discharged  
7 you as jurors, I want you to understand you're not required  
8 to talk with anyone about your service in this case unless  
9 the Court orders otherwise.

10 By the same token, at that point, when you've  
11 returned a verdict and I have accepted it and I have  
12 discharged you as jurors, then you are completely free to  
13 talk about the case with anyone that you choose to talk  
14 about the case with. The choice will be up to you and you  
15 alone at that point in time.

16 I'm now going to hand one clean copy of the  
17 verdict form and eight copies of these final instructions  
18 to the jury to the Court Security Officer to deliver to you  
19 in the verdict -- or, excuse me, to deliver to you in the  
20 jury room.

21 Members of the jury, you may now retire to the  
22 jury room to deliberate. We await your verdict.

23 COURT SECURITY OFFICER: All rise.

24 (Jury out.)

25 COURT SECURITY OFFICER: Be seated, please.



1           THE COURT: Counsel, while the jury deliberates,  
2 you are welcome to wait here in the courtroom or elsewhere  
3 in the courthouse. You are also free to wait at any  
4 offsite location.

5           In the event you're going to be outside of the  
6 building, you should make sure that my staff has a good,  
7 working cell phone number where we can call you in the  
8 event we receive a note or at the time we receive a return  
9 of the verdict.

10          With that and awaiting either a note from the jury  
11 or a return of their verdict, the Court stands in recess.

12          COURT SECURITY OFFICER: All rise.

13          (Recess.)

14          (Jury out.)

15          COURT SECURITY OFFICER: All rise.

16          THE COURT: Be seated, please.

17          Counsel, we've received a note from the jury. And  
18 I thought I brought two copies out here so that each side  
19 could have a copy.

20          Let's go make a copy of that, please.

21          COURTROOM DEPUTY: Okay.

22          THE COURT: I'll have a copy in just a minute for  
23 each side to see and look at. In the meantime, I'll read  
24 the note to you. I'll also indicate for the record that  
25 I've marked this note in the upper right-hand corner with

1 a 1 and a circle to identify it as the first note from the  
2 jury in regard to this trial.

3 This note reads as follows: Could we get the  
4 following items for the jury?

- 5 1. KP-1 [sic] spreadsheet.
- 6 2. Large drawing stand.
- 7 3. Robert Ledbetter deposition.
- 8 4. Jack Henry flowchart.

9 Thank you, comma, Mary Troboy.

10 So it appears Ms. Troboy, who was Juror No. 4, is  
11 the foreperson.

12 Now, if lead counsel for both parties will  
13 approach, I have a copy of the actual note for you each to  
14 look at.

15 MR. SON: Thank you.

16 THE COURT: My intention is to send this easel in  
17 the courtroom with the markers to them that will address  
18 Item No. 2.

19 I'd like you all to consult with each other and  
20 see if you can agree on what the KP-1 [sic] spreadsheet is.  
21 I believe it must be an exhibit used during the trial.

22 The Jack -- the Robert Ledbetter deposition,  
23 obviously, I cannot send to them, and I have a response  
24 prepared. In a moment I'll go over it with you.

25 And the Jack Henry flowchart I am assuming is a

1 demonstrative, and if it is, obviously I can't send a  
2 demonstrative to the jury.

3           Let me go off the record and let counsel consult  
4 with each other briefly as to both what the KP-1 [sic]  
5 spreadsheet is and confirming that the Jack Henry flowchart  
6 addresses a demonstrative that was used.

7           We're off the record.

8           (Off the record discussion.)

9           THE COURT: Let's go back on the record.

10           While we've been off the record, I have conferred  
11 with counsel with regard to the jury's note and the request  
12 set forth therein. It is my understanding that responding  
13 to the jury's note, both parties are agreeable that the  
14 requests for the KPI spreadsheet in the jury's note relates  
15 to Exhibit PTX-288. And with the agreement of both  
16 parties, I intend to send that exhibit back in response to  
17 the jury's Note No. 1.

18           I think everyone is in agreement that the large  
19 easel in the courtroom will be sent back to the jury with  
20 the markers and the tray below it in response to their  
21 request for a large drawing stand.

22           My -- my proposed response to the jury with regard  
23 to the Robert Ledbetter deposition, indicating I cannot  
24 send the jury deposition testimony and they have to rely on  
25 the memory -- their memory of all the testimony during the

1 trial, including testimony presented by deposition, appears  
2 to be agreeable to the parties.

3           And with regard to the fourth request identified  
4 in the jury's note as Jack Henry flowchart, the parties  
5 appear to be in agreement that that's represented by PT --  
6 Exhibit PTX-288, which is a spreadsheet of 10 distinct  
7 tabs, and while off the record, all 10 tabs have been  
8 printed, and a printed copy of PTX-288, as I intend to send  
9 it back to the jury, has been given to both sides, and they  
10 seem satisfied that that is the entirety of the spreadsheet  
11 and corresponds with the jury's request.

12           Consequently, I will read for the record the  
13 written response I intend to send to the jury, and then  
14 I'll ask both sides to offer a comment about whether they  
15 have any objections or agree to this written response.

16           My intended response to the jury in response to  
17 Jury Note No. 1 is as follows:

18           Members of the jury, in response to your Jury Note  
19 No. 1, please find the following:

20           One, the KPI spreadsheet, which you requested,  
21 appears to be PTX-288, which I've printed and am sending to  
22 you. If this is not what you requested, please let me know  
23 by a second separate note. If this is what you wanted,  
24 then no follow-up note to me is necessary, and I will  
25 assume this exhibit addresses your request.

1           Two, I am sending you a large easel with markers  
2 for your use as you requested.

3           Three, you also asked for, quote, the Robert  
4 Ledbetter deposition, close quote. I cannot send this to  
5 you. You will have to rely on your memory of witness  
6 testimony presented at trial, both from live witnesses in  
7 open court and from deposition witnesses presented to you  
8 as part of the trial.

9           Four, as to the, quote, Jack Henry flowchart,  
10 close quote, I am sending you Exhibit PTX-43. If this is  
11 not what you requested, please let me know by a second  
12 separate note. If this is what you wanted, then no  
13 follow-up note to me is necessary, and I will assume this  
14 exhibit addresses your request.

15           Coupled with that, I will send the jury PTX-43 and  
16 the printed version of PTX-288 and direct the Court  
17 Security Officer to deliver the easel from the courtroom  
18 and the accompanying markers to the jury.

19           Does that response -- let me ask on the record for  
20 a response from the parties as Court's intended response to  
21 Jury Note No. 1. Does Plaintiff have -- have any objection  
22 to this response, both in written form and together with  
23 what will accompany it -- accompany it going to the jury?

24           MR. SON: Plaintiff does not object.

25           THE COURT: Does Defendant have any objection?

1 MR. HEIDRICK: No, Your Honor.

2 THE COURT: All right. Then I'll hand the note --  
3 the actual note from the jury, which I've marked No. 1, to  
4 the courtroom deputy. I'll hand the written response to  
5 the jury with PTX-43 and PTX-288 to the Court Security  
6 Officer. I'll direct him to deliver that to the jury. And  
7 I'll direct him to deliver the easel and markers in the  
8 courtroom to the jury.

9 With that, counsel, awaiting either another note  
10 from the jury or a verdict, we stand in recess.

11 COURT SECURITY OFFICER: All rise.

12 (Recess.)

13 (Jury out.)

14 COURT SECURITY OFFICER: All rise.

15 THE COURT: Be seated, please.

16 Counsel, we've got a second note from the jury.

17 As a matter of fact, we've got some artwork from  
18 the jury.

19 I will read you what's on the note. I'll hand it  
20 then to the courtroom deputy, and I'll grant leave to  
21 Mr. Son and Mr. Heidrick to approach and look at it.

22 I'm going to mark it in the upper right-hand  
23 corner with a 2 for identification purposes.

24 This note says: Please send the diagram showing  
25 Jack Henry check processing flowchart. Thank you, Mary

1 Troboy.

2 I'll hand this to Ms. Lockhart.

3 Counsel, if you want to come look at it, it looks  
4 like to me it relates to a demonstrative that was probably  
5 used during the trial.

6 MR. HEIDRICK: Demonstrative.

7 MR. SON: Demonstrative.

8 THE COURT: So while you're here, let me hand you  
9 a proposed response that I'm going to send to the jury.

10 This response would say: Members of the jury, in  
11 response to your Jury Note No. 2, this drawing which you  
12 requested was a demonstrative used with one or more  
13 witnesses during the trial. As I explained in my final  
14 jury instructions to you, demonstratives are not evidence,  
15 but the testimony given by a witness who uses a  
16 demonstrative is evidence. Accordingly, you should -- you  
17 will have to rely on your memory of any testimony given by  
18 any witnesses while using or addressing this particular  
19 demonstrative.

20 Any objection from either Plaintiff or Defendant  
21 about me sending that response back to the jury?

22 MR. SON: No objection from the Plaintiff.

23 MR. HEIDRICK: No objection, Your Honor.

24 THE COURT: All right. I'm signing an original  
25 copy of that response. I'll hand it to the Court Security

1 Officer and direct that he deliver it to the jury.

2 I will also hand a duplicate original signed, to  
3 the courtroom deputy for inclusion in the papers of this  
4 cause.

5 Pending another note or the return of a verdict,  
6 we stand in recess.

7 COURT SECURITY OFFICER: All rise.

8 (Recess.)

9 (Jury out.)

10 COURT SECURITY OFFICER: All rise.

11 THE COURT: Be seated, please.

12 All right. Counsel, I've received the following  
13 note from the jury:

14 We have a unanimous verdict.

15 It's signed Mary Troboy, who is apparently the  
16 foreperson of the jury.

17 I'll hand the original note to the courtroom  
18 deputy, and I'll direct the Court Security Officer to bring  
19 in the jury.

20 COURT SECURITY OFFICER: All rise.

21 (Jury in.)

22 THE COURT: Members of the jury, please be seated.

23 Ms. Troboy, I understand that you're the  
24 foreperson of the jury; is that correct?

25 THE FOREPERSON: Yes, sir.



1 THE COURT: Has the jury reached a verdict?

2 THE FOREPERSON: Yes, Your Honor.

3 THE COURT: Would you please hand the completed  
4 and signed verdict form to the Court Security Officer who  
5 will bring it to me?

6 Members of the jury, ladies and gentlemen, I'm  
7 going to announce the verdict at this time into the record.  
8 I'd like each member of the jury to listen very carefully,  
9 because after I've announced the verdict publicly, I'm  
10 going to ask each of you if this is your verdict so that we  
11 can confirm on the record that it is, in fact, the  
12 unanimous verdict of all eight members of the jury.

13 Turning to the verdict form, wherein on Page 3 is  
14 located Question 1.

15 Did PPS Data prove by a preponderance of the  
16 evidence that Jack Henry directly infringed any of the  
17 asserted claims of the '106 patent?

18 The answer of the jury is: No.

19 Turning to Question 2 in the verdict form.

20 Did Jack Henry prove by clear and convincing  
21 evidence that from the perspective of a person of ordinary  
22 skill in the art, the asserted claims of the '106 patent  
23 only include activities that were well-understood, routine,  
24 and conventional as of April the 28th, 2000?

25 Thereunder all seven asserted claims are listed,

1 the jury's answer is the same for all seven asserted  
2 claims, and the jury's answer for each claim is: Yes.

3 Question 3, pursuant to the Court's instructions  
4 in the verdict form, is not answered and is left blank.

5 The last page of the verdict form is dated with  
6 today's date, September the 12th, 2019, and is signed by  
7 Mary Troboy as foreperson of the jury.

8 Members of the jury, let me poll you and make sure  
9 on the record that this is the unanimous verdict of all  
10 eight members of the jury.

11 If this is your verdict, as I have read it, would  
12 you please stand?

13 (Jury polled.)

14 THE COURT: Please be seated.

15 Let the record reflect that all eight members of  
16 the jury immediately rose and stood in response to the  
17 Court's question to poll the jury, and the Court finds that  
18 this is the unanimous verdict of all eight members of the  
19 jury.

20 The Court accepts the verdict, and I'll deliver  
21 the original verdict form to the courtroom deputy at this  
22 time.

23 Members of the jury, this now completes the trial  
24 in this case. From the very beginning, I've instructed you  
25 repeatedly about not discussing the case with anyone and

1 not discussing it among yourselves until you retired to  
2 deliberate.

3 I'm releasing you from those obligations now, and  
4 I'm releasing you from all the obligations you have as  
5 jurors in this case. I'm discharging you from that  
6 position.

7 Now, I know that the lawyers in the case would be  
8 interested in hearing from you if you're interested in  
9 talking to them. Here's how that works in this court, and  
10 it's been this way here for -- ever since I started  
11 practicing law in East Texas, and that's been over 35 years  
12 ago.

13 If you want to discuss your service in the case  
14 with anyone, including any of the members of either trial  
15 team, you're certainly free to do that. But you will have  
16 to initiate the discussion. They cannot come up to you and  
17 initiate a discussion with you about your service as  
18 jurors.

19 But if you'd like to talk with them, I'm  
20 confident, even though it's hot, they will probably be  
21 standing outside on the front sidewalk when you leave the  
22 courthouse, so you'll have the opportunity to walk by them.  
23 And if you are interested, stop and talk with them.

24 They will not initiate a conversation with you.  
25 And if you're not interested in talking to them, then you

1 simply walk right by, don't stop, don't start a  
2 conversation. It's your decision, and your decision only.

3           Also, members of the jury, I'm going to ask -- I'm  
4 going to ask Mr. Son and Mr. Heidrick to give me a cell  
5 phone number, and I will give you those cell phone numbers  
6 in the jury room in a minute. And if either of you want to  
7 call either of them and talk about your service in the  
8 case, tomorrow, next week, next month, whenever it's  
9 convenient for you, you'll have their number, and you can  
10 call them. They will not have your numbers. They will not  
11 call you.

12           The -- the bottom line is you have to initiate a  
13 discussion. You can talk to anybody you want to about your  
14 service in this case. You don't have to talk to anybody  
15 about your service in this case. It's your decision and  
16 your decision only.

17           Also, ladies, I want you to understand how much  
18 the Court appreciates your service in this case. Even  
19 though this is Thursday and we didn't have to go through  
20 Friday, it's been a significant burden on each of you and a  
21 sacrifice to serve as jurors in this case, and that  
22 sacrifice is not lost on any of us.

23           And we are all aware as members of the third  
24 branch of government, the judiciary, that we would be  
25 unable to discharge our constitutional mandate without

1 citizens like you being willing to make the sacrifice  
2 you've made in this case.

3           Some of you have driven, from where I can see,  
4 that you live 30, 40 miles, maybe more, each way each day.  
5 You've been here promptly. You've done everything the  
6 Court's asked you to do, and I cannot thank you enough for  
7 your service in this case.

8           As a matter of fact, I have a favor to ask of you,  
9 and I do this in every case. But my favor is I'd like you  
10 to take a few minutes and meet me in the jury room and let  
11 me come into the jury room. I'd like to shake each one of  
12 your hands. I'd like to look you in your eye and tell you  
13 personally how much I appreciate your service in this case.

14           I promise I won't keep you. I promise it will be  
15 short. But if you would afford me that privilege, I would  
16 consider it a privilege and an honor to thank you  
17 personally for your service.

18           You're not obligated to do that, but I promise if  
19 you will allow me that honor, it will be very short.

20           Members of the jury, that completes the trial of  
21 this case. You are discharged from your responsibility as  
22 jurors.

23           The Court accepts the jury's verdict, and the  
24 Court stands in recess.

25           I'll meet you in the jury room.

1 COURT SECURITY OFFICER: All rise.

2 (Jury out.)

3 THE COURT: As I said, counsel, that completes the  
4 trial of this case. You are excused.

5 (Court adjourned.)

6

7

CERTIFICATION

8

9

10 I HEREBY CERTIFY that the foregoing is a true and  
11 correct transcript from the stenographic notes of the  
12 proceedings in the above-entitled matter to the best of my  
13 ability.

14

15

16 /S/ Shelly Holmes  
SHELLY HOLMES, CSR, TCRR  
17 OFFICIAL REPORTER  
State of Texas No.: 7804  
18 Expiration Date: 12/31/20

9/12/19  
Date

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